

through February unless all of the diversions of member and nonmember milk, as the case may be, are pursuant to paragraph (d)(2)(i) or (ii) of this section, respectively, and they fall within the limits prescribed thereunder. If a handler diverting milk pursuant to this paragraph (d)(2) diverts milk of any dairy farmer in excess of the limits prescribed such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant.

(i) All of the diversions of milk of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk so diverted does not exceed 55 percent of the volume of milk of all members of such cooperative association or federation delivered to or diverted from pool plants during the month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 45 percent of the total of such nonmember milk for which the pool plant operator is the handler during the month.

(e) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received by the handler for whose account it is diverted at a pool plant at the location of the plant from which it is diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.52 and 1004.75 and the direct-delivery differential pursuant to § 1004.79, milk which is diverted shall be considered to be received at the location of the plant to which the milk is diverted.

(f) This definition shall not include a:

- (1) Producer-handler as defined in any order (including this part) issued pursuant to the Act;
- (2) Dairy farmer for other markets;
- (3) Government agency which is a handler pursuant to § 1004.9(e);
- (4) Dairy farmer with respect to milk reported as milk diverted to an other

order plant if any portion of such dairy farmer's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Dairy farmer with respect to milk physically received at a pool plant as diverted milk from another order plant if all of the milk so received from such dairy farmer is assigned to Class II or Class III and the milk is treated as producer milk under the provisions of such other order.

(g) The applicable percentages in paragraphs (d)(2)(i) and (d)(2)(ii) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the diversion limit percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of the diversion limit percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 47 FR 51732, Nov. 17, 1982; 49 FR 33432, Aug. 23, 1984; 56 FR 5329, Feb. 11, 1991; 60 FR 55310, Oct. 31, 1995]

#### § 1004.13 Producer milk.

*Producer milk* means any skim milk or butterfat contained in milk:

(a) Received at a pool plant pursuant to § 1004.7(a), (b), or (e) directly from the farm.

(b) Received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating plant, or is received as milk diverted from a pool plant pursuant to § 1004.7(a), (b), or (e).

(c) Received from producers by a co-operative association in its capacity as a handler pursuant to § 1004.9(c); or

(d) Diverted to a nonpool plant in accordance with the provisions of § 1004.12.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 56 FR 5329, Feb. 11, 1991]

**§ 1004.14 Other source milk.**

*Other source milk* means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products and bulk products specified in § 1004.40(b)(1) from any source other than producers, handlers described in § 1004.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1004.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1004.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1004.40(b)(1)) for which the handler fails to establish a disposition.

[56 FR 5329, Feb. 11, 1991]

**§ 1004.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk

or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[58 FR 27780, May 11, 1993]

**§ 1004.16 Fluid cream product.**

*Fluid cream product* means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

[58 FR 27780, May 11, 1993]

**§ 1004.17 Filled milk.**

*Filled milk* means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

**§ 1004.18 Exempt milk.**

*Exempt milk* means bulk fluid milk products received at a pool plant or a partially regulated distributing plant from the plant of a handler pursuant to § 1004.9(e) for processing and packaging and for which an equivalent quantity of packaged fluid milk products is returned to such handler during the month.

**§ 1004.19 Federation.**

*Federation* means an organization that is formed by two or more cooperative associations as defined in § 1004.20 and which is incorporated under the laws of the state.

[44 FR 21621, Apr. 11, 1979]